

(UI Tax Rate Amendments Draft 12-11-2007)

35A-4-303. Determination of contribution rates.

(1) (a) On or before January 1 of each year beginning January 1, 1985, an employer's basic contribution rate will be the same as the employer's benefit ratio, determined by dividing the total benefit costs charged back to an employer during the immediately preceding four fiscal years by the total taxable wages of the employer for the same time period, calculated to four decimal places, disregarding the remaining fraction, if any.

(b) In calculating the basic contribution rate under Subsection (1)(a):

(i) if four fiscal years of data are not available, the data of three fiscal years shall be divided by the total taxable wages for the same time period;

(ii) if three fiscal years of data are not available, the data of two fiscal years shall be divided by the total taxable wages for the same time period; or

(iii) if two fiscal years of data are not available, the data of one fiscal year shall be divided by the total taxable wages for the same time period.

(2) (a) On or before January 1 of each year beginning with January 1, 1985, all social costs as defined in Subsection 35A-4-307(1) applicable to the immediately preceding four fiscal years shall be divided by the total taxable wages of all employers subject to contributions for the same time period, calculated to four decimal places, disregarding the remaining fraction, if any.

(b) In calculating the social contribution rate under Subsection (2)(a):

(i) if four fiscal years of data are not available, the data of three fiscal years shall be divided by the total taxable wages for the same time period; or

(ii) if three fiscal years of data are not available, the data of two fiscal years shall be divided by the total taxable wages for the same time period.

(c) On or after January 1, 2000, the social contribution rate shall be:

(i) set at 0.0010 for any rate year in which the reserve factor established in Subsection (3)(c) is equal to or less than 1.0000; or

(ii) calculated by dividing all social costs as defined in Subsection 35A-4-307(1) applicable to the preceding four fiscal years by the total taxable wages of all employers subject to contributions for the same time period, calculated to four decimal places, disregarding any remaining fraction, for any rate year in which the reserve factor established in Subsection (3)(c) is greater than 1.0000.

(d) (i) The social contribution rate for the rate year beginning January 1, 2004, is set at .003.

(ii) On or after January 1, 2005, the social contribution rate shall be calculated by dividing all social costs as defined in Subsection 35A-4-307(1) applicable to the preceding four fiscal years by the total taxable wages of all employers subject to contributions for the same period, calculated to four decimal places, disregarding any remaining fraction.

(iii) Notwithstanding Subsection (2)(d)(ii), the social contribution rate for only the rate year beginning January 1, 2005, may not exceed .004.

(e) On or after January 1, 2009, the social contribution rate shall be calculated by dividing all social costs as defined in Subsection 35A-4-307(1) applicable to the preceding four fiscal years by the total taxable wages of all employers subject to contributions for the same period, calculated to four decimal places, disregarding any remaining fraction, and rounded to three decimal places, disregarding any further fraction, if the fourth decimal place is .0004 or less, or rounding up to the next higher number, if the fourth decimal place is .0005 or more.

(3) (a) On or before January 1 of each year beginning with January 1, 1985, the reserve factor shall be computed under Subsection (3)(b). For purposes of computing the reserve factor:

(i) the five-year average benefit cost rate is calculated by:

(A) determining the five highest benefit cost rates experienced in the 25 years ending December 31 one year prior to the computation date;

(B) adding together the rates determined under Subsection (3)(a)(i)(A); and

(C) dividing the amount under Subsection (3)(a)(i)(B) by five, calculated to four decimal places, disregarding the remaining fraction, if any;

(ii) the minimum adequate reserve fund balance is calculated by:

(A) multiplying the five-year average benefit cost rate by 1.5; and

(B) multiplying the amount under Subsection (3)(a)(ii)(A) by total wages of the fiscal year ending prior to the computation date, rounded to the nearest dollar;

(iii) the maximum adequate reserve fund balance is calculated by:

(A) multiplying the five-year average benefit cost rate by 2.0; and

(B) multiplying the amount under Subsection (3)(a)(iii)(A) by the total wages used under Subsection (3)(a)(ii)(B), rounded to the nearest dollar; and

(iv) the computation date is the January 1 on which the reserve factor is calculated.

(b) (i) The reserve factor is one if the actual reserve fund balance as of June 30 preceding the computation date is:

(A) equal to or greater than the minimum adequate reserve fund balance; and

(B) equal to or less than the maximum adequate reserve fund balance.

(ii) If the actual reserve fund balance as of June 30 preceding the computation date is less than the minimum adequate reserve fund balance, the reserve factor shall be the greater of:

(A) 2.0000 minus an amount equal to the actual reserve fund balance divided by the minimum adequate reserve fund balance, calculated to four decimal places, disregarding the remaining fraction, if any; or

(B) the reserve factor calculated in the prior year.

(iii) The reserve factor is 2.0000 if:

(A) the actual reserve fund balance as of June 30 preceding the computation date is:

(I) insolvent; or

(II) negative; or

(B) there is an outstanding loan from the Federal Unemployment Account.

(iv) If the actual reserve fund balance as of June 30 preceding the computation date is more than the maximum adequate reserve fund balance, the reserve factor shall be calculated by:

(A) dividing the actual reserve fund balance by the maximum adequate reserve fund balance, calculated to four decimal places, disregarding the remaining fraction, if any; and

(B) subtracting the amount under Subsection (3)(b)(iv)(A) from 2.0000.

(c) Beginning January 1, 2000, the division shall by administrative decision set the reserve factor at a rate that shall sustain an adequate reserve. For the purpose of setting the reserve factor:

(i) the adequate reserve is defined as between 17 and 19 months of benefits at the average of the five highest benefit cost rates in the last 25 years;

(A) Beginning January 1, 2009, the adequate reserve is defined as between 18 and 24 months of benefits at the average of the five highest benefit cost rates in the last 25 years;

(ii) the reserve factor shall be 1.0000 if the actual reserve fund balance as of June 30 preceding the computation date is determined to be an adequate reserve;

(iii) the reserve factor will be set between 0.5000 and 1.0000 if the actual reserve fund balance as of June 30 preceding the computation date is greater than the adequate reserve;

(iv) the reserve factor will be set between 1.0000 and 1.5000 if the actual reserve fund balance as of June 30 prior to the computation date is less than the adequate reserve;

(v) if the actual reserve fund balance as of June 30 preceding the computation date is insolvent or negative or if there is an outstanding loan from the Federal Unemployment Account, the reserve factor will be set at 2.0000 until the actual reserve fund balance as of June 30 preceding the computation date is determined to be an adequate reserve;

(vi) the reserve factor will be set on or before January 1 of each year; and

(vii) monies made available to the state under Section 903 of the Social Security Act, as amended, which are received on or after January 1, 2004, may not be considered in establishing the reserve factor under this section for the rate year 2005 or any subsequent rate year.

(4) (a) Until January 1, 1995, an employer's overall contribution rate is the employer's basic contribution rate multiplied by the reserve factor, if there is a reserve factor, calculated to four decimal places, disregarding any further fraction, plus the social contribution rate, and rounded up to the next higher multiple of .10%, but not more than a maximum overall contribution rate of 8.0% and not less than 1% for new employers.

(b) On or after January 1, 1995, an employer's overall contribution rate is the employer's basic contribution rate multiplied by the reserve factor, calculated to four decimal places, disregarding any further fraction, plus the social contribution rate, and rounded to three decimal places, disregarding any further fraction, if the fourth decimal place is .0004 or less, or rounding up to the next higher number, if the fourth decimal place is .0005 or more, but not more than a maximum overall contribution rate of 8.0% and not less than 1% for new employers.

(c) On or after January 1, 2000, an employer's overall contribution rate is the employer's basic contribution rate multiplied by the reserve factor established according to Subsection (3)(c), calculated to four decimal places, disregarding the remaining fraction, plus the social contribution rate established according to Subsection (2)(c), and calculated to three decimal places, disregarding the remaining fraction, but not more than a maximum overall contribution rate of 8.0%, plus the applicable social contribution rate and not less than 1.1% for new employers.

(d) On or after January 1, 2004, an employer's overall contribution rate is the employer's basic contribution rate multiplied by the reserve factor established according to Subsection (3)(c), calculated to four decimal places, disregarding the remaining fraction, plus the social contribution rate established according to Subsection (2)(d), and calculated to three decimal places, disregarding the remaining fraction, but not more than a maximum overall contribution rate of 9.0%, plus the applicable social contribution rate and not less than 1.1% for new employers.

(d) On or after January 1, 2009, an employer's overall contribution rate is the employer's basic contribution rate multiplied by the reserve factor established according to Subsection (3)(c), calculated to four decimal places, disregarding the remaining fraction, plus the social contribution rate established according to Subsection (2)(e), and calculated to three decimal places, disregarding the remaining fraction, but not more than a maximum overall contribution rate of 9.0%, plus the applicable social contribution rate and not less than 1.1% for new employers.

(e) The overall contribution rate does not include the addition of any penalty applicable to an employer as a result of delinquency in the payment of contributions as provided in

Subsection (9).

(f) The overall contribution rate does not include the addition of any penalty applicable to an employer assessed a penalty rate under Subsection 35A-4-304(5)(a).

(5) Except as provided in Subsection (9), each new employer shall pay a contribution rate based on the average benefit cost rate experienced by employers of the major industry as defined by department rule to which the new employer belongs, the basic contribution rate to be determined as follows:

(a) Except as provided in Subsection (5)(b), on or before January 1 of each year, the basic contribution rate to be used in computing the employer's overall contribution rate is the benefit cost rate which is the greater of:

(i) the amount calculated by dividing the total benefit costs charged back to both active and inactive employers of the same major industry for the last two fiscal years by the total taxable wages paid by those employers that were paid during the same time period, computed to four decimal places, disregarding the remaining fraction, if any; or

(ii) 1%.

(b) If the major industrial classification assigned to a new employer is an industry for which a benefit cost rate does not exist because the industry has not operated in the state or has not been covered under this chapter, the employer's basic contribution rate shall be 5.4%. This basic contribution rate is used in computing the employer's overall contribution rate.

(6) Notwithstanding any other provision of this chapter, and except as provided in Subsection (7), if an employing unit that moves into this state is declared to be a qualified employer because it has sufficient payroll and benefit cost experience under another state, a rate shall be computed on the same basis as a rate is computed for all other employers subject to this chapter if that unit furnishes adequate records on which to compute the rate.

(7) An employer who begins to operate in this state after having operated in another state shall be assigned the maximum overall contribution rate until the employer acquires sufficient experience in this state to be considered a "qualified employer" if the employer is:

(a) regularly engaged as a contractor in the construction, improvement, or repair of buildings, roads, or other structures on lands;

(b) generally regarded as being a construction contractor or a subcontractor specialized in some aspect of construction; or

(c) required to have a contractor's license or similar qualification under Title 58, Chapter 55, Utah Construction Trades Licensing Act, or the equivalent in laws of another state.

(8) (a) If an employer acquires the business or all or substantially all the assets of another employer and the other employer had discontinued operations upon the acquisition or transfers its trade or business, or a portion of its trade or business, under Subsection 35A-4-304(3)(a):

(i) for purposes of determining and establishing the acquiring party's qualifications for an experience rating classification, the payrolls of both employers during the qualifying period shall be jointly considered in determining the period of liability with respect to:

(A) the filing of contribution reports;

(B) the payment of contributions; and

(C) after January 1, 1985, the benefit costs of both employers;

(ii) the transferring employer shall be divested of the transferring employer's unemployment experience provided the transferring employer had discontinued operations, but only to the extent as defined under Subsection 35A-4-304(3)(c); and

(iii) if an employer transfers its trade or business, or a portion of its trade or business, as

defined under Subsection 35A-4-304(3), the transferring employer may not be divested of its employer's unemployment experience.

(b) Any employing unit or prospective employing unit that acquires the unemployment experience of an employer shall, for all purposes of this chapter, be an employer as of the date of acquisition.

(c) Notwithstanding Section 35A-4-310, when a transferring employer, as provided in Subsection (8)(a), is divested of the employer's unemployment experience by transferring all of the employer's business to another and by ceasing operations as of the date of the transfer, the transferring employer shall cease to be an employer, as defined by this chapter, as of the date of transfer.

(9) (a) A rate of less than 8% shall be effective January 1 of any contribution year on or after January 1, 1985, but before January 1, 1988, and a rate of less than the maximum overall contribution rate on or after January 1, 1988, only with respect to new employers and to those qualified employers who, except for amounts due under division determinations that have not become final, paid all contributions prescribed by the division with respect to the four consecutive calendar quarters in the fiscal year immediately preceding the computation date on or after January 1, 1985.

(b) Notwithstanding Subsections (1), (5), (6), and (8), on or after January 1, 1988, any employer who fails to pay all contributions prescribed by the division with respect to the four consecutive calendar quarters in the fiscal year immediately preceding the computation date, except for amounts due under determinations that have not become final, shall pay a contribution rate equal to the overall contribution rate determined under the experience rating provisions of this chapter, plus a surcharge of 1% of wages.

(c) Any employer who pays all required contributions shall, for the current contribution year, be assigned a rate based upon the employer's own experience as provided under the experience rating provisions of this chapter effective the first day of the calendar quarter in which the payment was made.

(d) Delinquency in filing contribution reports shall not be the basis for denial of a rate less than the maximum contribution rate.